

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

BRIAN C. DAVISON,)
Plaintiff,)
v.) Civil Action No.: 1:16-cv-540
DEBORAH ROSE, TRACY STEPHENS,)
ERIC HORNBERGER, JILL TURGEON, BRENDA)
SHERIDAN, JEFFREY MORSE, WILLIAM FOX,)
KEVIN KUESTERS, JOY MALONEY, ERIC)
DEKENIPP, and SUZANNE DEVLIN,)
In their official and individual capacities,)
and)
LOUDOUN COUNTY SCHOOL BOARD,)
Defendants.)

**DEFENDANTS DEBORAH [sic] ROSE, TRACY STEPHENS, ERIC HORNBERGER,
JILL TURGEON, BRENDA SHERIDAN, JEFFREY MORSE, WILLIAM FOX,
KEVIN KUESTERS, JOY MALONEY, ERIC DEKENIPP, SUZANNE DEVLIN, and
LOUDOUN COUNTY SCHOOL BOARD'S MOTION TO DISMISS
FILED PURSUANT TO FED R. CIV. P. 12(b)(1) and (6)**

COME NOW the defendants, Deborah [sic] Debra Rose (“Rose”), Tracy Stephens (“Stephens”), Eric Hornberger (“Hornberger”), Jill Turgeon (“Turgeon”), Brenda Sheridan (“Sheridan”), Jeffrey Morse (“Morse”), William Fox (“Fox”), Kevin Kuesters (“Kuesters”), Joy Maloney (“Maloney”), Eric Dekenipp (“Dekenipp”), Suzanne Devlin (“Devlin”) and Loudoun County School Board (“School Board”), by counsel, pursuant to Fed. R. Civ. P. 12(b)(1) and (6), and move this court for dismissal with prejudice of all counts of the Complaint on the following grounds:

1. The Complaint fails to state a claim or cause of action for which relief may be granted against any of the defendants for alleged violation of First or Fourteenth Amendment, or Equal

Protection, Constitutional rights, and fails to assert a substantial federal claim; therefore, the court is without subject matter jurisdiction.

2. Counts 1, 2, 3, 4, 5, 6 and 7 should be dismissed because the court is without subject matter jurisdiction as the claims are barred by the *Rooker-Feldman* and *Younger* abstention doctrines. The matters complained of are all the subject of pending state court lawsuits, including two suits on appeal to the Supreme Court of Virginia; or the subject of previously litigated matters in which final Orders have been entered or final appeals rendered.

3. The Complaint fails to state claims or causes of action for which relief may be granted for violation of any Constitutional rights, including procedural or substantive due process rights, as evidenced by the pending state court appeal proceedings and administrative remedies and procedures that were available to the plaintiff in accordance with applicable state law, including Virginia Code § 22.1-87, which proceeding is pending in the Loudoun County Circuit Court, Case No. 98468.

4. The School Board moves for dismissal with prejudice of Counts 1, 2, 3, 4, 5, 6 and 7 on the grounds that the Complaint fails to state a claim for which relief may be granted against the School Board for municipal liability under 42 U.S.C. § 1983.

5. Defendants Hornberger, Rose, Fox, Turgeon, Kuesters, Sheridan, Morse, Maloney and Dekenipp all move for dismissal of Counts 1, 2, 3, 4, 5, 6 and 7 on the grounds that the Complaint fails to state a claim for which relief may be granted against them for liability in their official capacity; and, in their individual capacity, as a matter of law they are entitled to absolute immunity/legislative immunity for any alleged acts or omissions involving School Board hearings, meetings and actions/decisions related to their legislatively delegated powers and authority; and in their individual capacity, as a matter of law they are entitled to qualified immunity for any other alleged acts or omissions.

6. Defendants Stephens and Devlin move for dismissal which prejudice of Counts 2, 3, 4, 5, 6 and 7 on the grounds that, as a matter of law, the Complaint fails to state a claim for which relief may be granted against them for liability in their official capacity; and in their individual capacity, as a matter of law they are entitled to qualified immunity for all of the alleged acts or omissions.

7. Defendants Rose, Stephens, Hornberger and Devlin move for dismissal of Count 8, identified as a state law defamation claim, on the grounds that the pleaded facts are insufficient to support a claim or cause of action for defamation; as a matter of law, the defendants are entitled to sovereign immunity, qualified immunity and privilege/qualified privilege; and defendants Rose and Hornberger are entitled to absolute/legislative immunity for all allegations concerning School Board proceedings, meetings, actions and/or decisions, related to the matters complained of.

WHEREFORE, for the foregoing reasons, for the reasons argued in the defendants' accompanying Memorandum in Support of Motion to Dismiss, and for any additional reasons to be argued at hearing of this matter, the defendants, collectively, move the court to grant their Motion to Dismiss and dismiss the Complaint with prejudice.

DEBRA ROSE, TRACY STEPHENS, ERIC HORNBERGER, JILL TURGEON, BRENDA SHERIDAN, JEFFREY MORSE, WILLIAM FOX, KEVIN KUESTERS, JOY MALONEY, ERIC DEKENIPP, SUZANNE DEVLIN, and LOUDOUN COUNTY SCHOOL BOARD

By Counsel

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and Loudoun County School Board*

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of June, 2016, I electronically filed the foregoing pleading with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

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